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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,993	05/03/2006	Werner Runft	R.304987	4907

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EXAMINER
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TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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05/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/577,993

**Applicant(s)**

RUNFT ET AL.

**Examiner**

Thanh K. Truong

**Art Unit**

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                 |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-3-06</u> . | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1. Applicant's cancellation of claims 1-8 is acknowledged.

#### ***Specification***

2. The disclosure is objected to because of the following informalities: the recitation "The invention is based on a machine for filling and sealing ... in the preamble to claim 1" in [0002] page 1 is improper. The specification should not be referred to the claim, because in the process of the prosecution of the application, the claim may be canceled, amended or withdrawn, and the canceled (or amended or withdrawn) claim will render the disclosure indefinite or invalid. Other similar recitations through out the specification also need to be corrected. Appropriate correction is required.

#### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 36A, 36B, [0051] page 11.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for subjecting at least one of the guideways of each guide flap is subjected to suction", claim 16, and "wherein adjacent guide flaps are separated from one another across a gap, which is preferably defined by a step in the bearing region of at least one of the adjacent guide flaps", claims 13-15, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9, the phrase "in particular" line 1, renders the claim indefinite, for it is unclear what is the claimed limitation – the limitation before the phrase "in particular" or the limitation following the phrase "in particular".

Claims 13-15, the recitation "wherein adjacent guide flaps are separated from one another across a gap, which is preferably defined by a step in the bearing region of at least one of the adjacent guide flaps" is confusing, for it is unclear what is the structure limitation of the claim.

The phrase "which is preferably" (emphasis added), in claims 13-15, is vague and indefinite, because the resulting claim does not clearly and positively set forth the metes and bounds of the claimed limitation – a narrow range or limitation within the broad range or limitation.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 9, 10, 13, 14, 17, 18, 20 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribani et al. (5,966,910).

Ribani et al. discloses an apparatus comprising: a capsule delivery device (2), which has receptacles (1), each for one capsule, and having at least one capsule expulsion station (10), which includes

a capsule expulsion device (101) for axially expelling the capsules each out of their respective receptacle;

guide flaps (106), individually controllable by means of an actuating device (114) and pivotable with respect to a pivot shaft (110), which are each assigned to one capsule receptacle and each have two guideways (103, 108), triggerable by means of the actuating device, for the respective associated capsules, and

partitions, which separate the guideways of adjacent guide flaps from one another (figure 1 shows a plurality of guideways parallel to each other and separated by partitions), wherein the partitions are each an integrated component of a respective guide flap (it is construed that the guide flap 106 and the partitions on both sides of the guide flap are joining together into an unit – integrated component).

Ribani et al. further discloses:

Regarding claim 10, the guide flaps are supported on a common pivot shaft (110).

Regarding claims 13-15, as best understood, the adjacent guide flaps are separated from one another across a gap which is the thickness of the partition itself.

Regarding claims 17-21, the expulsion device comprises a plurality of tappets (101) which are assigned one to each capsule receptacle (Figure 20).

Regarding claim 28, wherein the actuating device for the guide flaps cooperates with at least one inspection station for the capsules (column 8, lines 9-15).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3721

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 22, 23, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribani et al. (5,966,910).

As discussed above in paragraph 8 of this office action, Ribani et al. discloses the claimed invention, but it does not expressly disclose that the guide flaps are triggered by a pneumatic cylinder.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have modified Ribani et al. so that a pneumatic cylinder are used to actuate the guide flap because Applicant has not disclosed that using pneumatic cylinder (instead of an electrical actuator) provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with an electrical actuator because an electrical actuator as taught by Ribani et al. would perform equally well.

Therefore, it would have been an obvious matter of design choice to modify Ribani et al. to obtain the invention as specified in claims 22-27 – pneumatic cylinder to actuate the guide flap.

***Allowable Subject Matter***

11. Claims 11, 12, 15, 19, 21, 24 and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

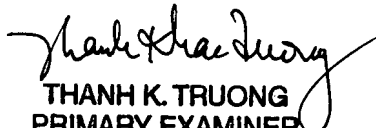
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkf  
May 24, 2007.

  
THANH K. TRUONG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700